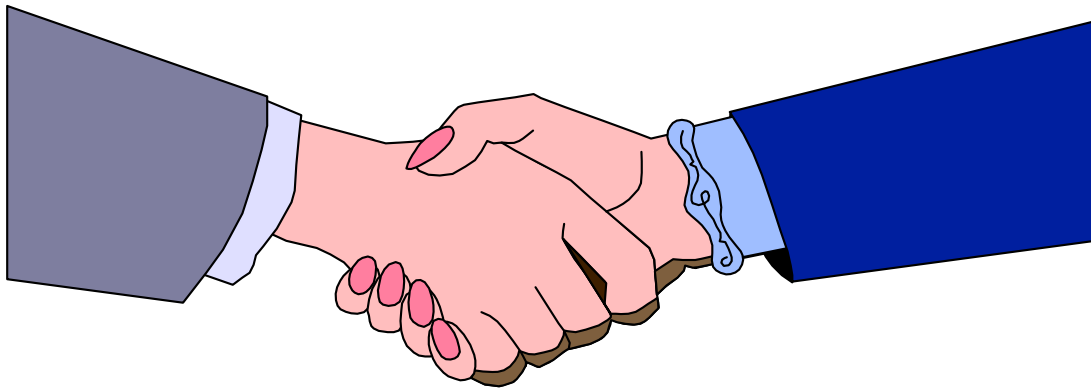


Labor-Management Relations



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SCOPE

Technicians Covered by the Labor Management Contract. The Federal Service Labor Management Relations Statute, Section 7112 has determined that all categories of the Federal Excepted and Competitive technicians not holding supervisory or managerial positions are covered.

Technicians Not Covered by the Labor Management Contract. The Federal Service Labor Management Relations Statute, Section 7112, states that the following individuals are excluded from bargaining unit status: managers and supervisors, employees engaged in intelligence work which directly effects national security, employees engaged in personnel work in other than a purely clerical capacity, employees administering the Federal Labor Relations program and confidential employees.

POLICY

Technician Participation. The well being of technicians and efficient administration of the Agency, California National Guard (CNG), are benefited by providing technicians the opportunity to participate in the formulation and implementation of personnel policies and practices effecting conditions of their employment.

Recognizing and Working with Unions. It is the policy of the Department of Defense, National Guard Bureau, as well as, the agency (CNG), to recognize and work with Labor Organizations in matters of concern to the technicians they represent. In addition, to place primary reliance on informed settlement or any differences or disputes at the earliest stage possible by discussion between Management and the Labor Organization.

RESPONSIBILITIES OF THE LABOR RELATIONS OFFICER

Plan and Formulate Policy. Plan and formulate agency policies and procedures through and for the Adjutant General (TAG).

Liaison. Serves as liaison with the Labor Organizations and represents TAG in consultation with any Labor Organization holding national consultation rights or national exclusive recognition; obtaining the views of such organizations on proposed changes, or revisions of personnel policies.

Agency Leadership. Provide agency, leadership by acting for TAG in the establishment of a positive and effective Labor-Management Relations program at all levels of the agency.

Effectiveness of the Program. Appraise the effectiveness of the CNG Labor-Management Relations program and make policy changes that may be required.

Regulatory Advice. Furnish regulatory advice in all matters arising under the CNG Labor-Management Relations contract.

Representation before the Authority. Represent TAG in formal administrative proceedings before the Authority, where representation is required.

Informing Technicians. Assure that technicians are informed of their rights and obligations and that each technician is provided a copy of the current Labor-Management agreement.

Participation in Consultations. Participate in consultations and negotiations between Labor Organization and Management officials, upon request.

Provide Technical Advice. Furnish management and supervisory officials with technical advice, assistance, and interpretation of Labor-Management policies and regulations.

Develop and Maintain a Sound Program. Provide staff assistance in developing and maintaining a sound program of effective labor management relations.

RIGHTS AND RESPONSIBILITIES OF MANAGEMENT

- Determine the mission, budget, organization, number of employees, and internal security practices of the agency; and
- Hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;
- Assign work, make determinations with respect to contracting out, and determine the personnel by which agency operations shall be conducted; fill positions, make selections for appointments from, among properly ranked and certified candidates for promotion; or any other appropriate source; and
- Take whatever actions may be necessary to carry out the agency mission during emergencies.
- Furnish to the exclusive representative, upon request, to the extent not prohibited by law, data that is normally maintained by the agency in the regular course of business; which is reasonably available and necessary for proper discussion, and negotiation of subjects within the scope of collective bargaining.

RIGHTS AND RESPONSIBILITIES OF THE LABOR ORGANIZATION

When a Labor Organization receives Certification of Exclusive Representation they are entitled to act for and negotiate agreements covering technicians of the bargaining unit. It is responsible for representing the interest of all technicians in the bargaining unit without discrimination and without regard of Labor Organization membership.

- Is consulted regarding personnel policies and to meet and confer at reasonable times with respect to personnel policies, practices and matters effecting working conditions.
- Are the exclusive representative at negotiated grievance procedures and the representative of a technician when a technician chooses the use of a negotiated grievance procedure.
- The rights of an exclusive representative under the provisions shall not be construed to preclude a technician from being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or exercising grievance or appellate rights established by law, rule, or regulation.
- Negotiate in good faith and to approach the negotiations with a sincere resolve to reach a collective bargaining agreement.
- Be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment.
- Meet at reasonable times and convenient places as frequently as necessary to avoid unnecessary delays.

RIGHTS OF THE EMPLOYEE

Exclusive recognition of a Labor Organization does not preclude a technician, regardless of whether he or she is a member of the Labor Organization, from processing a grievance or appeal based on rights established under applicable law, rule, regulation or established agency policy. Nor does it preclude the technician from choosing his or her own representative in a grievance or appellate action, when he or she does not choose to use the negotiated grievance procedure. Technicians may present grievances arising under the agreement without the intervention of the exclusive representative, so long as the exclusive representative is given an opportunity to be present and is not inconsistent with the terms of the negotiated agreement.

Weingarten Right. A technician has a right to be represented by the Labor Organization in connection with an investigation if; the technician reasonably believes that the examination may result in disciplinary action against the employee; and he or she requests representation.

Formal Discussion. Formal discussion occurs when a member of management conducts a meeting that includes one or more technicians and involves a representative of management and has a formalized agenda, and the meeting involves personnel policies, practices or working conditions.

- If a formal discussion is anticipated, the technician is entitled to have a representative present and to receive advance notification concerning the time and place of the meeting.
- Formal discussions are not one-on-one discussions and are not the daily part of the supervisor-subordinate relationship. For example, a discussion with a technician concerning his or her performance standards and critical elements is not a formal discussion.

Right of Representation. Technicians in bargaining unit must be informed annually of their right to union representation as set forth in 5 USC 7114 (a)(2)(B).

INFORMATION

Technicians of the CNG shall be informed of their rights and obligations under the provisions of Title VII. Technicians will be provided a copy of the existing Labor-Management agreement. Newly hired technicians will be given a copy of the Labor-Management agreement as part of the "new technician packet".

STANDARDS OF CONDUCT

In accordance with the Federal Service Labor Management Relations Statute, Section 7120, an Agency shall accord recognition to a Labor Organization that is free from corrupt influences and opposing basic democratic principles.

CONSULTATION RIGHTS

In accordance with the Federal Service Labor Management Relations Statute, Section 7117: A Labor Organization that is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by an agency with respect to Government wide rule or regulation issued by the Agency effecting any substantive change in conditions of employment (COE). Such consultation rights shall terminate when the Labor Organization no longer meets the criteria prescribed by the Authority. Any issue relating to a Labor Organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority. A Labor Organization having consultation rights under Section 7117 of the Statute shall:

- Be informed of any substantive change in conditions of employment proposed by the Agency and shall be permitted reasonable time to present its views and recommendations regarding the changes.
- If any views or recommendations are presented under Section 7117 of the Statute to an Agency by any Labor Organization:
- The Agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and
- The Agency shall provide the Labor Organization a written statement of the reasons, for taking the final action.

CONSULTATION AND NEGOTIATION

Personnel Procedures, Policies and Working Conditions. Consultation and negotiations are a means of providing Labor Organizations a voice in the development and implementation of CNG personnel policies, procedures, and general working conditions. Individual grievances and complaints are properly handled within the agency grievance procedures or negotiated grievance procedures and are not appropriate subjects for consultation or negotiation.

Obligation To Meet In Good Faith. Management officials and representatives of the Labor Organization have an obligation to consult and negotiate seriously, diligently and in good faith. Decisions reached as a result of consultation and negotiations must be made in consideration of their effect on the CNG mission, with full regard to the interest of the technician concerned.

GRIEVANCE

Grievances can be a tool to use as a review our procedures and practices. They are available to the union, technicians, and management. Grievance procedures are to be developed in a fair, simple, and expeditious manner to assure union rights to present and process grievances in its own behalf or on behalf of a technician. They also allow technicians to present grievances on their own behalf.

Coverage. Coverage may include a complaint by a technician concerning matters relating to the conditions of employment. By a Labor Organization concerning matters relating to the employment of a technician. By a technician, labor organization, or agency concerning the effect, interpretation or a claimed violation of an agreement or claimed violation, misinterpretation or misapplication of law, rule or regulation affecting conditions of employment.

Exclusions. Prohibited political activities, retirement, life insurance, health insurance, any examination, certification, or appointment, classification of any position that does not result in the reduction in grade or pay of an employee.

UNFAIR LABOR PRACTICES

California National Guard Management Shall Not: Interfere with, restrain, or coerce a technician in the exercise of rights assured by issuance, the negotiated agreement between the CNG and the Labor Organization or the safeguards assured by the Federal Service Labor Management Relations Statute (Title VII). Encourage or discourage member-ship in a Labor Organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment. Sponsor, control, or otherwise assist a labor organization, except that the CNG may furnish customary and routine services and facilities when consistent with the best interests of the CNG,

its technicians, and the Labor Organization, if requested by the Labor Organization. Discipline or otherwise discriminate against a technician because he or she has filed a complaint or given testimony under Title VII. Refuse to accord appropriate recognition to a Labor Organization qualified for such recognition. Refuse to consult, confer, or negotiate with a Labor Organization as required by Title VII.

Labor Organization Shall Not: Interfere with, restrain, or coerce a technician in the exercise of his or her rights under Title VII. Attempt to induce management or supervisory personnel to coerce a technician in the exercise of his rights under Title VII. Coerce, attempt to coerce, discipline, fine, or take other economic sanctions against a member of the Labor Organization as punishment or reprisal for, or for the purpose of hindering or impeding work performance, productivity, or the discharge of duties owed as an officer or employee of the United States. Call or engage in a strike, work stoppage, or slowdown; picket the CNG labor management dispute; or condone any such activity by failing to take positive action in prevention. Informational picketing may be permitted as long as it does not interfere with National Guard activities. Discriminate against a technician with regard to the terms or conditions of membership because of race, color, creed, sex, age or national origin. Refuse to consult, confer, or negotiate with the CNG as required by Title VII.

LABOR-MANAGEMENT Do's AND Don'ts Understanding and Administering the Contract.

DO study the agreement, know what it contains, especially what it requires and prohibits;

DO become familiar with the principles of contract interpretations and use them to bridge the gap and answer ambiguities;

DO recognize that established past practices concerning conditions of technicians in the work place are binding;

DO arrange separate and joint orientation and training sessions and informal discussions to promote knowledge and understanding of the agreement;

DON'T allow practices to develop which are contrary to agreement provisions, without careful consideration and coordination.

Understanding Roles and Interests

DO recognize that some tension is inherent in Labor-Management relations;

DO accept the fact that some disagreements inevitably will arise;

DO recognize separate interests and responsibilities, as well as mutual interests and interdependence;

DON'T take disagreements personally.

Achieving Goals and Solving Problems Through Cooperative Relations

DO recognize and respect technicians, union and management rights under the Statute and the collective bargaining agreement;

DO fulfill all responsibilities under the Statute and the agreement;

DO accept the agreement as a useful statement of organization policy and procedure for accomplishing work and improving conditions of employment of technicians in a fair, consistent and efficient manner;

DO avoid formality, confrontation, litigation and adversarial, relations whenever possible;

DO define "winning" in disagreements and disputes as achieving mutually acceptable solutions;

DO communicate frequently and informally on conditions of employment of technicians and all other matters of mutual concern and interest;

DO "keep your eye on the ball" at all times, that is, the long-term advantages of cooperation in terms of benefits to technicians and the efficiency and effectiveness of agency operations;

DON'T regard the agreement as a threat to one's position and authority or as a club to beat one's counterpart into submission;

DON'T confine communication and dealings only to contract administration and problems.

Evaluating Experience Under the Agreement

DO evaluate on a continuous, day-to-day basis;

DO keep the evaluation simple, noting problems, questions and observations in a daily log;

DO use the evaluation to improve day-to-day contract administration and relations, to advise higher level organizational elements of problems and trends, and to provide suggestions for future negotiations;

DO recognize that the effectiveness of a collective bargaining agreement and relationship depends upon the attitude and related conduct of the supervisor and union representative.

CONCLUSION

The Statute requires that Labor-Management relations and collective bargaining agreements promote technician participation, through their union representatives, in the decisions which effect their conditions of employment and, as a "bottom line", promote the efficiency and effectiveness of agency operations.

Cooperative relations clearly constitute the best way to achieve these goals. That is not an unrealistic or overly idealistic claim. In the austere decade of the 90s, cooperation really is the only course to follow. The stark truth is that agencies and unions can no longer afford to choose costly, time-consuming and counter-productive adversarial relations and litigation as a normal way of doing business. And neither can they afford to pass up the positive benefits to be derived from cooperation.

That is not to say that cooperation is easy. A continuous, day-to-day effort is necessary to develop and maintain cooperative relations and effective administration of a negotiated agreement. Obviously, that effort will take more time and energy when disagreements and disputes arise.

The key players in building cooperation and making it work are the union representative and supervisor at the operating level. It is their attitude and day-to-day efforts that will determine the success of a negotiated agreement and the Labor-Management relationship. To the extent that

they deal with each other on a professional, cooperative basis, the collective bargaining agreement and relationship will contribute to the well being of technicians and the effective conduct of the public business as intended by the Statute.

DEFINITIONS

Advance Notice. In general, an announcement of an intention to carry out a certain action, given to an effected or interested party in sufficient time to prepare for the action.

Adverse Action. An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal.

Agency Administrative Grievance Procedure. In the Federal Government, a systematic Agency procedure for the resolution of grievances from employees who are not in bargaining units. The OPM's regulations specify the basic requirements for each agency's administrative grievance procedure.

Bargaining Rights. Legally recognized right of the labor organization to represent employees in negotiations with employers.

Bargaining Unit. A group of employees recognized by the employer or group of employers, or designated by the Federal Labor Relations Authority as appropriate to be represented by a labor organization for purposes of collective bargaining. In the Federal sector, employees do not have to be dues paying members of a union in order to be represented by the union.

Bilateralism. Joint effort by management and union to determine policies and practices effecting working conditions. Where management and union maintain a two-way flow of information and negotiate over subjects set forth in 5 USC 7106(b)(1).

Certification. The determination by the FLRA of the results of an election (Certification of Election Results); or the recognition of the labor organization by the FLRA as the exclusive representative based on the mandatory procedure for determining such a representative (Certification of Representative).

Certification Bar. From the date of the certification of a union as the exclusive representative, a one (1) year period during which that union cannot be challenged by another labor organization. This bar protects a union from challenge in the absence of a negotiated agreement.

Civil Service Reform Act of 1978 (CSRA). Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively and participate through labor unions in decisions which affect their working conditions. Title VII is codified at 5 USC Chapter 71.

Collective Bargaining or Negotiations. The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

Collective Bargaining Agreement. A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees

and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

Conditions of Employment. Personnel policies, practices and matters affecting working conditions. It does not include policies, practices and matters relating to prohibitive political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.

Consultation. An obligation on the part of employers to consult the labor organization on particular issues before taking action on them. In the Federal Government consultation refers only to the duty owed by agencies to labor organizations which have been accorded national consultation rights. That duty involves informing the union of substantive changes in COE, giving the union time to present its views and recommendations, considering those views and recommendations, and giving the union written reasons for the final action.

Executive Order (EO) 10988. Issued in 1962 by President Kennedy, setting the framework for collective bargaining in Federal Government. The Order defined the scope of participation by unions in determining personnel policies and working conditions not established by statute. Executive Order 10988 was superseded by EO 11491 in October 1969.

Executive Order 11491 (As Amended). Issued in 1969 by President Nixon, setting forth the parameters and general guidelines for bilateralism in the Federal labor relations program. It established administrative bodies to carry out the Order and also provided for unfair labor practice procedures; recognition of labor organizations; and standards of conduct for labor organizations before the effective date of Title VII.

Federal Labor Relations Authority (FLRA). An administrative body empowered by Title VII of the CSRA of 1978 to provide leadership in Federal Service Labor-Management Relations by establishing policies and guidance.

Federal Mediation and Conciliation Service (FMCS). An independent Federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of “preventive mediation”.

Federal Service Impasses Panel (FSIP). Organizational entity within the FLRA, which resolves bargaining impasses in the Federal service. The Panel may recommend procedures, including arbitration, for the settling of impasses or it may direct settlement of the impasse itself.

Formal Discussion. Discussions between an agency representative(s) and a bargaining unit employee(s) or the employee’s representative(s), on an employee’s grievance, or personnel practice or policy, or other COE which affects bargaining unit employees. The union has the right to be present at these discussions.

Grievance. Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the employment of an employee; or by a labor organization, an agency, or an employee concerning interpretation or violation of the collective bargaining agreement or a violation, interpretation or application of a law, rule or regulation affecting conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

Long Term Contract: Generally, a collective bargaining agreement with duration of two (2) or three (3) years or longer, as distinguished from a one-year contract.

Mediation. A procedure by which an impartial third party (a mediator) is used to settle disputes. The mediator assists in resolving the dispute by attempting to find a solution satisfactory to both parties in a dispute but renders no binding decisions. In the Federal Government, mediation is required before impasses can be referred to the FSIP.

National Consultation Rights. In the Federal Government, a union which has exclusive recognition of an agency-wide basis, or is the exclusive representative of a substantial number of agency employees is granted consultation rights. To fulfill these rights, the agency must inform the union of substantive changes in COE, give the union time to present its views and recommendations, consider those views and recommendations, and give the union written reasons for the final action.

Negotiability. “Negotiability” refers to whether a given topic is subject to bargaining between the agency and the union. The FLRA makes final decisions on whether a subject is negotiable.

Official Time. Duty time that may be granted to employees act in on behalf of the exclusive representative to perform representational duties without loss of pay or charge to an employee's leave account. Official time may not be granted for internal union business.

Unfair Labor Practice (ULP). Action by either an employer or union which violates rights granted by the Federal Service Labor-Management Relations Statute. The agency, union or employee may file a ULP complaint.

Unilateral Action. Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.